

MINUTES

MONTANA SENATE 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

Call to Order: By **SEN. BOB KEENAN**, on February 16, 1999 at 3:00 P.M., in Room 413/415 Capitol.

ROLL CALL

Members Present:

Sen. Tom Keating, Chairman (R)
Sen. Fred Thomas, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Dale Berry (R)
Sen. Vicki Cocchiarella (D)
Sen. Alvin Ellis (R)
Sen. Bob Keenan (R)
Sen. Walter McNutt (R)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Gilda Clancy, Committee Secretary
Eddye McClure, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 425, SB 432, 2/10/1999
Executive Action: SB 365, SB 271, SB 425

HEARING ON SB 425

Sponsor: SEN. BILL WILSON, SD 22, Great Falls

Proponents: Mike Foster, Montana Contractor's Association
Ed Maronick, President, Maronick Construction
Carl Schweitzer, Montana Subcontractor's Association
Gene Fenderson, Montana Joint Heavy & Highway Committee
Don Judge, AFL-CIO

Opponents: Tom O'Connell, Department of Administration, Architecture & Engineering Division
Ralph, DeCunzo, Department of Military Affairs, Facilities Contracts & Construction
Kevin Drebsbach, Associate Director, Planning & Construction, University of Montana
Bob Lashaway, Director of Facility Services, Montana State University, Bozeman

Opening Statement by Sponsor: SEN. BILL WILSON, SD 22, Great Falls, stated this is the bill that simply requires the contractor to submit weekly payroll records to a state or local governmental unit contracting for a project in which prevailing wage requirements are enforced. If a contractor intentionally fails to submit these records, there is a penalty. This bill will increase fairness to workers and make sure all contractors are competing and operating fairly in prevailing wage projects.

Proponents' Testimony:

Mike Foster, Montana Contractor's Association, alleged when the Government Affairs Committee got together earlier this year, they talked about some of the problems facing the construction industry. The contractor's world is highly competitive. The contractor lives in a world of risk and responsibility, accountability and once in awhile, a small reward. They discussed people having to pay prevailing wage and the enforcement problems which are associated with that. The concern is that sometimes contractors are not perhaps being as straight-forward as they should in all the different record-keeping requirements associated with the prevailing wage. **Mr. Foster** stated those contractors may not be members of his association, but they are constantly competing with those who are not living up to the 'letter of the law'. This is an enforcement issue and the Department of Labor has extremely limited manpower to try to

enforce the statute. The contractor's organization tried to improve the enforcement of laws in the construction work with minimum wage laws. One approach is to propose the government to add to the budget, which was quickly rejected. The construction industry is not terribly fond of growing government. This bill was decided upon as a way to get around the problem of enforcement without spending more money. That solution is to require contractors in public works projects to provide weekly certified payroll records which would be submitted to the owner. Some state agencies and school districts may look at this and say they don't have room to store this information, but we will have to do something. The contractors are open to how these records would be stored, but it is important these records are available in case questions are raised.

Ed Maronick, President, Maronick Construction, Helena, affirmed this bill is about enforcement. Current law requires contractors to pay a very high wage. Most contractors are complying with this law, but some are not. This gives them an unfair advantage over the others. This bill is a way to level the playing field.

Carl Schweitzer, Montana Subcontractor's Association, stated their number one priority is getting paid on time. Beyond that, it is concern about people who are not paying their employees on a level which is required on a job.

Gene Fenderson, Montana Joint Heavy & Highway Committee, said his organization is made up of the Laborer's Union, the Operating Engineer's Union, the Teamster's Union, the Finisher's Union and the Oil Worker's Union. This bill will help level the playing field and he asked for a "do pass".

Don Judge, Montana State AFL-CIO, reported they are also in favor of this bill.

Opponents' Testimony:

Tom O'Connell, Department of Administration, Architecture & Engineering Division, explained he was present to oppose SB 425 because his office is a contracting agency for state buildings including Corrections, University System, Fish, Wildlife & Parks, Military Affairs, Department of Labor, etc. To build these buildings they have between 300 to 350 projects on state-wide basis. As of last Friday, they had 296 projects around the state. The existing statutes require they include prevailing wage in their bid specifications. They have no enforcement authority or expertise in enforcing prevailing wages. However, they do include prevailing wage in their contracts. Of the 300 projects they have going at any point in time, typically on a

yearly basis they receive phone calls from the Department of Labor two or three times asking if a particular project is theirs. His assumption on these phone calls is that there is some kind of a wage dispute on the projects. This bill requests a certified payroll for over 300 projects, which does not make sense to him when questions arise on only 1% of their overall projects. **Mr. O'Connell** asked an agency who does certified payroll for Federal Davis Bacon wage rates what the volume of paperwork they get in to have some sense of the work. If they have the building program now before the legislature approved later in the year, they will have slightly under a half billion dollars of construction through **Mr. O'Connell's** office. Looking at the number of certified payroll, they would have to require six more filing cabinets just to keep up with it. Currently, they have six filing cabinets for all correspondence files on these. Basically, they will be doubling their filing with this bill. He asked the Committee to let them use their time more productively and effectively. His department has no enforcing authority, that resides with the Department of Labor. Currently, there are ways in statute to prosecute violators and enforce this. He asked the Committee to vote against the bill.

Ralph DeCunzo, Department of Military Affairs, Facilities

Contracts & Construction, showed a box of files which contained one federal government project. It is around a \$12M project and his box of files represented the certified payrolls collected. The box did not involve any of the follow-up information nor any of the correspondence back and forth to the federal Department of Labor and the contractor. He is very cognizant of the relationship his department has with the construction industry. He is a proponent regarding leveling the playing field, but does not think this bill does that. They have no expertise to be able to evaluate all the paperwork involved. The contractors are required to keep their certified payrolls and if there is any kind of a claim or question, it is their responsibility. If a question rises in the state, it is the Department of Labor's responsibility to investigate and enforce. When he asked a federal contracting officer about training for the responsibility of keeping certified payrolls, she told him there was none. She came up through the ranks and had experience in certifying payrolls. Regarding the time factor, she told him it takes about two hours per day. The conclusion is they don't see any benefit to the construction industry by changing the current legislation or by imposing more bureaucracy into the private sector.

Kevin Krebsbach, Associate Director, Planning & Construction,

University of Montana, explained they have had approximately \$107M in construction over the past few years. To date, they have one claim which has been investigated. They do not believe

they should be a warehouse to store all the paperwork for the contractors. They will work with them as much as possible but they have to oppose the bill.

Bob Lashaway, Director of Facility Services, Montana State University of Bozeman, stated they contract for quite a few projects outside the Architecture & Engineering Division. Over the last five or six years they have completed about \$100M in projects in addition to what has been handled with the Architecture & Engineering Division. He can remember only two claims in the past six years and both have been handled through the Department of Labor. He believes there are adequate safeguards in place and remedies for those situations. Their agency would be required to keep a lot of extra paperwork if this bill passes and this would require more money needed by his division. He also would like to see the playing field leveled, but this bill asks them to file records which may be needed.

Questions from Committee Members and Responses:

CHAIRMAN TOM KEATING asked **John Andrew, Department of Labor**, if his department was the regulatory body who checked into claims in which some contractor did not pay prevailing wage on a particular contract.

Mr. Andrew responded that is correct.

CHAIRMAN KEATING asked how many complaints they had in the past couple of years.

Mr. Andrew answered in the last fiscal year, they had in the vicinity of 86 written complaints and the year before that, in the vicinity of 90 some.

CHAIRMAN KEATING asked how he resolved those complaints.

Mr. Andrew responded they need to get in touch with whomever the contractor is.

CHAIRMAN KEATING asked if they were required by law to have the certified payrolls available for inspection.

Mr. Andrew responded, yes, upon request of the department they are required to submit certified.

CHAIRMAN KEATING asked how many of those have been actual violations?

Mr. Andrew guessed it might be 70% had some sort of difficulty.

CHAIRMAN KEATING then inquired if the person or contractor fined, or is there a penalty for having to make up the wages.

Mr. Andrew responded any back pay would have to be initiated, then the law makes provision for other penalties.

CHAIRMAN KEATING asked if this bill would pass, and the state agencies had to have these things on file, would the Department of Labor go to their office to look at these certified records, or would they go to the contractor to look at the certified records.

Mr. Andrew though they would go to the contractor unless it were an option that the certified were on file some place else.

SEN. ALVIN ELLIS mentioned **Mr. Andrew** alleged there were other penalties which employers face when they get cross-wise in this position. He asked what those penalties are.

Mr. Andrew responded those are audit costs, 25% per day that the employee is underpaid, then a 20% of the unpaid wages penalty on top of that.

SEN. ELLIS recapitulated then the penalty is out of cost plus 20% punitive fee on wages.

Mr. Andrew stated up to 20% is the actual language.

SEN. ELLIS asked what that usually costs. Obviously 20% is not always assessed and what is that based on, is it a willful or a negligent act?

Mr. Andrew responded in many instances in the course of investigating complaints, they will waive all or a considerable portion of that 20%.

SEN. ELLIS inquired what the considerations are which lead to that decision.

Mr. Andrew answered a lot is the availability of records, the cooperation they get from an individual, and the nature of the offense, whether or not they have been before the department on different occasions for similar violations.

SEN. ELLIS asked if the department ascertains that the records on wages are accurate.

Mr. Andrew responded that through the investigation they may through written correspondence or oral communication talk with

the individuals who are on the job to see if the certified are consistent with what people are actually paying.

CHAIRMAN KEATING asked **Mike Foster** since the contractors brought this bill forward because they felt there were some who were not paying prevailing wage, and yet the department says they answer all the complaints they get, if he had any evidence that some contractors are not being caught or investigated by the department.

Mr. Foster said the contractors have stated this is a problem. It is not necessarily they aren't paying prevailing wage, but sometimes it is a matter of classification. Depending upon what the worker is doing, it could be in the wrong classification. As far as evidence, there is roughly 90 per year which are occurring and he is unsure how that works with the filing of a complaint. If one contractor files a complaint against another contractor on a labor issue, it is a delicate matter.

CHAIRMAN KEATING asked if the contracting agency or their authorized representative required to study the content of these certified records and make a decision there is an error in the pay scale.

Mike Foster responded if **CHAIRMAN KEATING** was referencing the bill no, but in the current law it is all based upon complaints. Until a complaint is filed, there is no analysis occurring as to whether or not someone is in violation.

CHAIRMAN KEATING then inquired what kind of service a contractor or contracting agency be performing other than just storing records.

Mr. Foster said it provides that if the Department of Labor could go to the source, whatever the unit of government may be, it would protect the contract. There would be no concern about whether or not that contractor was doing anything with those records prior to an audit or a follow-up on a complaint. Those records would all be stored with an independent agency.

SEN. ELLIS asked **Mike Foster** what would precipitate action by the Labor Department without a complaint. If this bill makes a lot of extra work for the agency who is going to look at it?

Mr. Foster responded 40 boxes doesn't take a huge amount of space for storage. A complaint filed would go directly to the box in that agency and the analysis would be made.

SEN. DALE BERRY remarked if the last phase were eliminated, it seems that the opponents would go away. If the subcontract employer who is required to maintain these records by submitting them to the contracting agency kept these boxes themselves, would that alleviate major concern if there is a complaint?

Mr. Foster answered those contractors are currently keeping those records, but how well they are making sure they are off in an area not being used for some other storage or an intermingling of other records is uncertain. He is presenting this bill to make it a cleaner process.

CHAIRMAN KEATING asked **Tom O'Donnell** since he is a contracting agency, when his agency puts out bids for projects, if they receive the bid based on receiving the payroll records with the bid.

Mr. O'Donnell responded no, they do not. They include in the bid specifications the requirements that prevailing wage be paid for whatever district the product was in. So they receive no other information regarding the certified payroll. If there is a complaint filed, the existing statute give the Department of Labor the responsibility or authority to request the contractor to provide those records to them within five days.

CHAIRMAN KEATING asked if this measure were to pass, and they would have to receive these certified payroll records on a weekly basis, would they be required to look at them to see if they are paying the prevailing wage.

Mr. O'Donnell said no, and he has no authority along those lines.

CHAIRMAN KEATING said then, you are the recipient of this stuff and have to stack it in a corner.

Mr. O'Donnell answered yes.

CHAIRMAN KEENAN asked how they get their payroll certified.

John Andrew responded the certified payroll is a true and accurate account of the wages with has been paid on a job. It doesn't take an accountant to do it, it is simply a truthful statement of what they are submitting is accurate.

Closing by Sponsor:

SEN. WILSON closed the hearing on SB 425 by expressing a person could put this information on computer disk to store. The paperwork problem could be rectified that way. The Department of Military affairs mentioned the big box of paper. **SEN. WILSON**

read page 19 which states, "if a wage violation is filed with the department.....". This means nothing has to be dealt with unless a complaint is filed. Also, 90 complaints can mean hundreds of people, so this is affecting a lot of people. There is a problem and this bill is a deterrent to that problem.

{Tape : 1; Side : A; Approx. Time Counter : 36 - 44}

EXECUTIVE ACTION ON SB 365

Motion: SEN. KEATING moved that SB 365 DO PASS.

Motion: SEN. COCCHIARELLA moved that THE AMENDMENT BE ADOPTED. **EXHIBIT (las38a01)** She explained amendment #1, stating that she moved on the first number in exhibit 1. There are separate amendments on the same page. If #1 passed, she would not motion to pass #2 as #1 is the one she preferred.

Discussion: SEN. KEATING asked SEN. COCCHIARELLA if the first amendment meant the prevailing wage by a contractor will apply within the district and the district which was bordering or touching it or is contiguous to it, would this mean they would end up with just two districts which would be subject to prevailing wage.

SEN. COCCHIARELLA responded the intention of the amendment is to not allow someone to cross a county line which could move you into another district. If there is actual transporting of something or work being done just across the line district to avoid paying prevailing wage, this amendment states that cannot be done.

SEN. WALTER MCNUTT expressed in actuality, that could involve than two districts. If you were in the middle of the state, you could use the district either side of you.

SEN. COCCHIARELLA responded that is correct.

Vote: Motion that AMENDMENT #1 BE ADOPTED carried 8-1 with SEN. ELLIS voting no.

Motion: SEN. KEATING moved that SB 365 DO PASS AS AMENDED.

Discussion: SEN. SUE BARTLETT affirmed in working with the contractors on this bill it is her understanding the contractor's intent is to restore the status quo in how prevailing wage was handled prior to the Attorney General's opinion of March 31, 1998 except for the piece which has to do with fabrication of items

specifically for that project. She asked **John Andrew** if that was a correct statement.

Mr. Andrew responded his recollection of **SEN. MOHL'S** testimony was to put back to the status quo which existed prior to the issuance of that Attorney General's opinion.

SEN. BARTLETT referred to subsection 5 on page 4 and asked if **Mr. Andrew** thought this section was the status quo prior to the Attorney General's opinion.

Mr. Andrew thought this was the status quo, but there was a disagreement about this.

SEN. BARTLETT stated **SEN. COCCHIARELLA'S** amendment #2 dealt with that particular section and specified the transportation would not be subject unless the goods, supplies, materials, or items are produced under special circumstances which are defined on page 2, line 27. **{Tape : 1; Side : B; Approx. Time Counter : 44 - 50}** Special circumstances means worked performed at a facility which is built or developed for that specific project. If the Committee would consider amendment #2, would that bring them closer to the status quo on transportation prior to the Attorney General's opinion.

Mr. Andrew thought it would. That is very true for the highway end of things where they have familiarity. Pits which are open specifically for a project. They do not have familiarity is in the building construction end of things where they haven't had any experience. If someone establishes a separate plant which is manufacturing a specialty item for a project, they haven't been faced how they would handle transportation. On the highways this change would bring the law more in line with the status quo prior to the Attorney General's opinion.

Motion: **SEN. BARTLETT** moved that **AMENDMENT #2 BE ADOPTED.**

Discussion: **SEN. KEATING** stated he is not comfortable putting another amendment on without the sponsor or a representative of the contractors present. He said this might be a potential for a floor amendment when the sponsor can debate it if the bill is passed through the Committee. He would resist the motion for that reason.

SEN. COCCHIARELLA explained she did not offer the amendment because there is not absolute agreement in this language on this amendment. There is still concern that we are not returning to the status quo before the Attorney General's opinion. She is not sure how to address this. The language on page 4 on

transportation is still not clear. She still believes there is a problem here.

Motion: SEN. BARTLETT withdrew her motion to adopt **AMENDMENT #2.**

Vote: Motion that **SB365 DO PASS AS AMENDED** with amendment #1 carried 6-3 with SEN. BARTLETT, SEN. COCCHIARELLA, AND SEN. WILSON voting no.

{Tape : 1; Side : B; Approx. Time Counter : 50 - 74}

EXECUTIVE ACTION ON SB 271

EXHIBIT(las38a02) and **EXHIBIT(las38a03)** were faxed to the Committee.

Discussion: Eddye McClure explained **EXHIBIT(las38a04)**.

Motion: SEN. KEATING moved that **SB 271 DO PASS.**

Motion: SEN. KEATING moved that **THE AMENDMENTS BE ADOPTED.**

Discussion: SEN. KEATING said the first part of the amendments go along with what they heard in testimony regarding wrongful discharge. Those suggestions were drafted into an amendment.

Eddye McClure explained this is an avenue with how to deal with wrongful discharge.

SEN. KEATING alleged the last amendment is borne out of a situation of if an employer is not comfortable with giving information to his employee regarding firing him and says that his work was sloppy, if that employee files a wrongful discharge suit on that basis, the sloppy work is the employer's only defense. There may be a host of other reasons which are truthful. Under current law, he is prohibited from using anything else. He can only use the statement given for the reason of firing. This amendment states the employer is not bound to just that statement and he must know there is a wrongful discharge suit to be filed, then he can give the employee who is released a full and honest account as to why they were let go and that is used as defense in a wrongful discharge suit. This does not change current law that states what can be used for defense in a wrongful discharge suit.

Eddye McClure added if she had allowed a fired employee to think the only reason for the discharge was the sloppy work, all other

reasons are locked out of the process in a wrongful discharge suit.

SEN. COCCHIARELLA mentioned she wanted to be sure the 'black-listing' was not changed.

Ms. McClure explained the information has to be truthful, it cannot be false or misleading.

SEN. KEATING referred to **(EXHIBIT 2)**, a letter from Moulton, Bellingham, Longo & Mather, P.C. The second page of this letter gives an example of what happens with this bill and also a suggestion of how to fix that problem without changing the 'black-list' law.

Ms. McClure mentioned this letter is what was used in drafting **SEN. MIKE TAYLOR'S** amendment **(EXHIBIT 4)**.

SEN. COCCHIARELLA explained she is very concerned about the black-listing because she saw it happen to someone who did not deserve it. Rumors spread for this person who filed the Workers' Compensation claim. She wants to make sure black-listing is still prohibited and against the law.

Ms. McClure expressed that black-listing is still against the law.

SEN. KEATING asked for the employers who are aware that their statement is their only defense available often times were not respondent at all because of fear. Also, it has been stated there are out of state companies who won't do business in Montana because of that. This law will make sure the employer knows he may be looking at a wrongful discharge suit, and will, therefore express the full extent of the discharge because he realizes that is his only defense. The contest between the employer and the employee becomes much fairer under the law. People wanting to do business here are at least getting a fair shake and it wouldn't be an inhibitor to somebody coming into the state to do business.

Vote: Motion that **THE AMENDMENT BE ADOPTED** carried unanimously.

Motion/Vote: **SEN. MCNUTT** moved that **SB 271 DO PASS AS AMENDED**. Motion carried 8-1 with **SEN. BARTLETT** voting no.

{Tape : 1; Side : B; Approx. Time Counter : 74 - 86}

EXECUTIVE ACTION ON SB 425

Motion: SEN. WILSON moved that SB 425 DO PASS.

Discussion: SEN. MCNUTT remarked he understands there is a problem, but he thinks this bill is going to create another problem because people will file claims for the sake of filing and the Department of Labor will go back to the contractor to see their certified records. He doesn't believe the bill accomplishes the objectives.

SEN. KEATING commented as a member of the Finance & Claims Committee, and listening to the testimony he believes there should be a fiscal note on this bill. It increases the work load on a number of state agencies which are funded out of the General Fund. He said he cannot support the bill.

SEN. COCCHIARELLA heard some 'scary' things from the State and the University System which she cannot believe. You can scan and store on disk. There is so much capability out there for maintaining this. The purpose of the bill is to keep those records and to make it fair. It goes back to this unfair playing field which was created in Workers' Compensation. Some people were not insuring their employees and were competing against legitimate businesses who did everything which was required by law and suddenly the uninsured employer got the bid. It is unfair when someone does not keep their certified records and they are not turned in. That is the objective of the bill.

SEN. ELLIS agreed there is a potential problem. Obviously, the contractors think there is also, but the solution he has trouble with. It seems to him SEN. COCCHIARELLA is correct that the ability to put this information on disk is available. But we cannot expect these departments to do that because that would be a bigger job than filing all this. The responsibility should be for the contractors to have these disks available and if somebody blows the whistle on them they should have to provide that disk within the time frames that they have to meet. That is how to solve this problem if we want a record-keeping solution.

SEN. MCNUTT stated he did not know if the Committee received enough information from the contractors who are doing payroll on computers. He didn't think it would be much of a problem to send this information in on a disk.

SEN. KEATING mentioned that is not in this bill.

Substitute Motion/Vote: SEN. ELLIS made a substitute motion that SB 425 BE TABLED. Substitute motion carried 6-3.

HEARING ON SB 432

Sponsor: SEN. FRED THOMAS, SD 31, Stevensville

Proponents: Brendon Rohan, Montana Liability Coalition
Chris Gallus, Montana Chamber of Commerce
Matthew Quinn, Jr., Asarco

Opponents: Roger Sullivan, Attorney, Representing Mine
Workers and Families
Don Judge, AFL-CIO
Gene Fenderson, Montana Joint Heavy & Highway
Committee
Alice Priest, Representing Self, Libby
Gayla Benefield, Representing Self, Libby
Dennis Day, Representing Self, Libby
Les Skramstad, Representing Self, Libby
LeRoy Thom, Representing Self, Libby
Al Smith, Montana Trial Lawyer's Association
Nancy Butler, State Fund
Norita Skramstad, Representing Self, Libby
Representative Scott Orr, HD 82, Libby

Informal Testimony: Jacqueline Lenmark, American Insurance
Association

Opening Statement by Sponsor:

SEN. FRED THOMAS, SD 31, Stevensville, conveyed this legislation is to provide occupational disease benefits to otherwise qualified claimants who suffer from occupational related diseases but whose claims are currently time barred.

This bill allows workers or their beneficiaries who are last employed in the State of Montana prior to July 1, 1979 to bring claims for occupational disease benefits within three years from the effective date of this act, or through reasonable diligence could be discovered when suffering from an occupational disease. This same group of workers or their beneficiaries will have the right to file for occupational disease benefits if, within one year, after passage of this act, they discover they are suffering from an occupational related disease. In this case the Department of Labor is permitted to waive the claim filing period for an additional two years which is consistent current occupational disease statute, prescribing the time limits within which claims must be filed.

This legislation was brought about for two reasons. First, the recognition for the time limitations applicable to the workers who last worked in the State of Montana prior to July 1, 1979 did not recognize there are many disease processes which have extended leniency periods. With the actual physical symptoms of a disease not becoming apparent until many years after the worker suffered his or her exposure to the toxic substance, asbestos. As a result, although workers contracted occupational related diseases, which under normal and expected circumstances should have fallen in the coverage of Montana's Occupational Disease Act. Because of the time limitations imposed at the time the workers were prohibited from seeking occupational disease benefits.

It is a policy of Montana that when workers are injured or diseased within the scope and course of their employment, they are entitled to avail themselves to the Occupational Disease Act. It is intended to be a no-fault system readily available to the worker providing benefits on a timely manner without reliance upon attorneys or the court system. This bill is intended to grant this particular group of workers the right to pursue occupational disease benefits in accordance with the policy of the State of Montana. This legislation also arises out of the Supreme Court decision in the case of Gidly vs. W.R. Grace and Company. In that case, the Montana Supreme Court is offering the then-existing occupational disease statutes to allow a worker or his or her beneficiary whose occupational disease is time barred to pursue a civil action against his or her employer.

The worker is then faced with the uncertainty of the significant expense and prolonged time requirements which is necessary as part of the civil ligation process. Workers then become highly dependent upon attorneys and the court system in their efforts to obtain some compensation for occupational related diseases. At that time, employers are deprived of their right to be free from civil actions by workers in exchange for them to participate in the no-fault Workers' Compensation and Occupational Disease Act. The Supreme Court ruling is inconsistent with the public policy facing Montana's underlying Occupational Disease Act. This legislation is intended to benefit both workers and employers by bringing both back under the coverage of occupational disease.

The proposed amendment to this bill addresses the procedural and administrative aspects of handling of claims brought by this particular group of workers or their beneficiaries rather than attempt to deal with procedures which were established 20 to 40 years ago. We want them eliminated and current administrative practices to be used in handling claims for such claimants at this time.

This deals with people who were employed up through July 1 of 1979, which was 20 years ago this past July. In addition, this does not apply to people who have filed litigation or who have litigation pending now.

Proponents' Testimony:

Brendon Rohan, Montana Liability Coalition, explained he is an attorney from Butte who represents clients who could potentially be impacted by SB 432. This bill applies to a certain limited potential class of claimants, those people who are last employed in the State of Montana prior to July 1, 1979.

This legislation intends to close a gap in Montana's occupational disease system. The gap was created by the law itself by the Montana Supreme Court decision and by medical science. A worker who was last employed in the State of Montana prior to July 1, 1979 had a maximum of three years within which to bring a claim for occupational disease benefits. **{Tape : 2; Side : A; Approx. Time Counter :86 - 116}**

A worker who had exposure to potentially hazardous or toxic substances in his work environment prior to terminating his employment on July 1, 1979 goes on for a period of time, perhaps 15 to 20 years and there is no symptoms and no way to diagnose his condition related to his employment before 1979. This legislation intends to provide for a worker who has suffered hazardous exposures during his employment to be treated in the same manner as workers applying for occupational disease benefits today are treated.

The secondary intent of this bill is to restore the status quo between the employer and employee which was lost through the Montana Supreme Court decision in **Gidly**. Essentially the Court determined is that if an occupational disease claim is time barred because of statutes in effect at the time the case was brought, the claimant is entitled to pursue a civil action against his employer. This bill should return the worker to the no-fault system of occupational disease and at the same time provide the employer with protection from civil claims. This bill provides the worker the opportunity to obtain benefits through the system that the legislature has always intended a worker who is injured or diseased in the course and scope of his employment can pursue his remedy against his employer, rather than pursuing a civil remedy in district court.

The proposed amendment to the bill simply makes clear the procedural aspects of handling these claims will be governed by the law in affect today.

He believes this bill satisfies both the employee and the employer and urged the Committee to pass SB 432.

Chris Gallus, Montana Chamber of Commerce, supports this bill. This bill eliminates the distinction between pre-July 1, 1979 employees and post-July 1, 1979 employees for the purposes of determining when an employee needs to file a claim for occupational disease benefits. The employees now have one year from when they discover they have an occupation related disease to bring the claim. The State has the discretion to allow two more years due to reasonable cause and ability. In a basic sense they have three years to file that claim. That rule does not apply to employees before July 1, 1979.

This bill extends occupational disease benefits to that particular group of employees, to give employers the protection of exclusive remedy. It avoids uncertain expensive and time-consuming and often protracted litigation, and provides immediate compensation for occupational related diseases. It also substitutes stable, no-fault insurance based system for the unstable system of litigation.

Senate Bill 432 does not affect cases currently before a court. It does not affect cases filed by people other than employees. It does not affect employees who worked in Montana after July 1, 1979. We are all better off in instances when we avoid protracted litigation. This bill will have little impact on the system, but provide immediate benefits for effective employees and will provide a stable environment for Montana employers to operate their businesses. It will help employees and employers avoid the consequences of litigation.

Matthew Quinn, Jr., Asarco, Attorney, said he had some clients who were potentially affected by SB 432. It provides two things, consistency and certainty for both the employers involved and for the employees. It puts the parties on the playing field so they know the rules and the outcome.

Eddy McClure informed the Committee on page 3, line 10 the department asked she add a new rule to subsection 5 which basically says, "provisions of this chapter on the effective day of this act will govern the presentment administration of all claims filed under subsections 3 and 4.

Opponents' Testimony:

Roger Sullivan, Attorney, Representing Mine Workers and Families, informed the Committee he was in opposition to this bill. This bill appears to give relief to the worker injured by a disease, specifically asbestosis. The truth is this bill is really a W.R. Grace relief bill which would:

- 1) Deny the injured worker their present rights,
- 2) Put the worker in a position where we would have to apply for bureaucratic relief which can take years to obtain,
- 3) Substantially reduce the grievously injured worker's benefits.

More importantly, from a public policy standpoint it would:

- 1) Allow W.R. Grace from being held accountable for its acts,
- 2) It would transfer the obligation for these injuries to occupational disease insurers, both in this particular instance specifically and more generally.

He submitted **EXHIBIT (las38a05)**.

Don Judge, Montana State AFL-CIO, remarked many signed this legislation thinking it was a good bill. Further review discovered this legislation is intended to benefit, not just one corporation, but any large corporation whose employees terminated their employment prior to 1979 who had not been covered under the Occupational Disease Act as related to asbestosis in repetitive injuries and other types of injuries. The workers from W.R. Grace in Libby are members of the AFL-CIO. They belong to the Operating Engineers, which is one of the oldest local unions in the State of Montana. They fought for many years with W.R. Grace. They knew they were being exposed to something and they brought concerns to the AFL-CIO that they were taking these things home to their children. In a mine where there is dust, you don't blow that dust off, you carry it home with you. This was going on in the 1960s and up to as late as that plant was operating.

There are more than just the workers of W.R. Grace in Libby. There are a lot of workers who worked with the former Anaconda Corporation who let their employment prior to 1979 and who may be impacted by this legislation. Occupational disease coverage in Montana is a joke. It is one of the worse laws in the country. It doesn't provide even the same level of benefits that you get if you are covered under a regular Workers' Compensation injury. Those workers at least have an opportunity through the court system to take on those employers who knew they were subjecting

them to injuries, dust, and other chemicals. He urged the Committee to defeat this legislation.

Gene Fenderson, Montana Joint Heavy & Highway Committee, stated there was a series of articles in the USA Today Magazine last week. The articles tell about asbestos and what those companies did to people. One article is titled Miners, Factory Workers Bring Death Home on Toes, another is titled South African Blacks Never Knew That Asbestos Was Killing Them. Also, Public Awareness Has Never Caught Up With The Science was printed last week. This is not a question of allowing no fault insurance with reasonable employers. Employers have to be protected from the problems on the job just as a worker has to be protected. This is a totally different type of case and he asked that this bill not be passed.

Alice Priest, Libby, Montana, explained she has asbestosis/fibrosis of the lungs. Her husband, Virgil Priest worked at the W.R. Grace Company from October 1961 to October 1978. In 1982 he was diagnosed with cancer from asbestos and passed away three months later. Mrs. Priest was 54 years old at the time. She didn't receive Workers' Compensation. Her oxygen machine is her constant companion 24 hours per day. She eats, sleeps, bathes and uses the restroom with it. She explained all this was caused because the W.R. Grace Company did not keep this hazardous material from the workers and their families. She asked the Committee not to pass this bill.

Gayla Benefield, Libby, Montana, claimed she did some research on the W.R. Grace Mine. In 1922 that mine was an asbestos mine and vermiculite was a bi-product. They found a market for it by expanding it and eventually it became the asbestos and vermiculite mine and then just to vermiculite. She said her father went to work there in 1954 and worked there for 19 years. In 1973 he was 61 years old and couldn't even walk across the room. He thought he had heart problems but got outside of Libby and found out he had no lungs. He died in 1974 at age 62. They almost precluded the high cost of disability by 18 months. Her mother was 54 at the time and by 1980 her mother began having pneumonia every year. Finally, in 1986 she was diagnosed with asbestosis. In their family, **Ms. Benefield** said no one knew it was asbestos which caused all this because no one talked about it. They never heard the word asbestos and her father never mentioned it. Her mother died in 1986 and was bedridden for the last 17 months of her life. She was on oxygen for ten years and financially this took everything she had. **Ms. Benefield** alleged she lived with the remnants of this company for 25 years and has done nothing but pick up the pieces. Her brother in-law died in 1992 from lung cancer and he worked there. She named several

families in Libby whose relatives have died from asbestosis and whose children have been affected by it. She said this company knew and chose to turn their back on it because of greed. If this bill passes, it will make it easier for a company which brought everything down on themselves. The town of Libby still continues to suffer because of W.R. Grace. There is over 200 cases of diagnosed asbestosis in a town of 2800 people and there is no 'red flag' raised. Most people are too sick to talk about it. This bill cannot pass.

Dennis Day, Representing Self, Libby, stated his father died in 1978 at the age of 62. **Mr. Day** worked at the mine for 20 years in all types of dust. It was very unpleasant trying to work with the Workers' Compensation people in Missoula and he asked for a "do not pass" on this bill.

Les Skramstad, Representing Self, Libby, said he worked in the mine for 45 years and worked in incredible dust for \$2.35 per hour. After 30 years he looked around and all his friends were dead. He went to Dr. Whitehouse in Spokane who diagnosed him with asbestosis and told him that he had five to ten years to live. That was three years ago. People are being exposed to this stuff in Libby right now, his is not an isolated case. Everybody he knew is gone and the town is still full of this stuff. He begged the Committee not to pass this bill.

LeRoy Thom, Representing Self, Libby, commented he also worked for W.R. Grace from 1974 until they shut it down in 1990. He also worked on the tear-down of the plant. It appears to him this bill is specifically protecting W.R. Grace and he doesn't know why the Committee would even consider protecting a company that doesn't even reside in the state and has caused so many problems. **{Tape : 2; Side : B; Approx. Time Counter : 116 - 175}** They have caused expenses which the State of Montana has had to pay, expenses which W.R. Grace should incur. He doesn't know why this company hasn't been held responsible when they have intentionally and willfully subject employees to an unsafe workplace, whether it is 1979 or 1999. He strongly urged the Committee to 'kill' this bill.

Al Smith, Montana Trial Lawyers Association, stated they are very much opposed to this bill. When he saw the bill title, at first he thought it was great to take care of these workers, but then realized it was a bad bill. The Gidly decision was made in 1986 so where was this legislation in 1987, 1989, etc? Six legislative sessions have passed since and suddenly we want to help these workers. He said it doesn't work that way. He doesn't know who the members of the Montana Liability Coalition are, but he guarantees they are not workers. This bill protects

corporate dollars, pure and simple, primarily W.R. Grace. There are comments made this bill does not affect claims which are currently filed. This tries to make a retroactive application of the Occupational Disease Act and he believes it is true those claims have already been filed and you cannot prevent those. But if you look at the law, it does say that anybody who within three years of the effective date should have known about the disease are now under the Workers' Compensation Act which is their exclusive remedy. People up to the present date no longer have the option to file a claim. Those people who knew of it three years ago would be prevented by this because of the Workers' Compensation exclusivity law. Workers who have been exposed to toxic substances over the years in the workplace. As a public policy matter we should help those folks out and identify those who need our help. Let's draft a bill to help those people and doesn't help out just the employers.

Nancy Butler, State Fund, remarked their concerns are directed at the principles of insurance. This bill retroactively imposes liability 20 or more years later. This type of exposure is not contemplated with premiums which are assessed before 1979. The overall impact of legislation leaves a gap between the impact and effective date. It minimizes the predictability and stability of the Workers' Compensation System in Montana. The impact for the State Fund would be on the Old Fund, not the current State Fund. The bill, as it reads states it is for persons who are last employed prior to July 1, 1979. The Gidly decision interpreted the Occupational Disease Act as declaring the last day of work the date of the occupational disease. That sets the benefits paid so the wage loss benefits at the compensation rate would be the benefits in affect for those years prior to 1979. Medical benefits would be as of the date of service, they operate a little differently. If the process changes, it is applied to all claims, not just claims from that date forward.

Norita Skramstad, Representing Self, Libby, said her husband is diagnosed with asbestosis. Most people have husbands, wives, kids and grandkids. What if they were all diagnosed with asbestosis. Even the kids who played in ballfields in Libby were exposed. She has kids and grandkids who have played in these fields for years. A lot of houses in Libby are still insulated with asbestos. W.R. Grace hasn't helped anybody clean up any of the problems. They are ignoring it and trying to sweep everything under the rug. She doesn't believe this bill should pass.

REP. SCOTT ORR, HD 82, Libby, stated he doesn't believe neither the sponsors of the bill nor the co-sponsors really understood the ramifications of the bill. It was probably presented with

one side. This is a W.R. Grace bill and W.R. Grace is not appearing to present their side of the story, they do that in court. Like most corporations, they are a good neighbor and have done a lot of good things for Libby. They have built ballfields. **REP. ORR** explained that when he was in High School, he took vermiculite, expanded it with a bunson burner, ground it into flour, made cookies and ate it to show vermiculite is good stuff. He doesn't think eating it is harmful, but breathing it is. The fact is he played little league baseball on vermiculite fields and may also be affected. In his opening, **SEN. THOMAS** said this is for workers whose claims are time barred and those workers are not present. Those workers who are present aren't those workers. This bill doesn't benefit the workers and the company. It does not bar folks who have filed litigation at this time, but it will bar those who have not filed. These cases are surfacing. He presented a letter written to **House Speaker John Mercer** which was dated January 12 and is from the 19th Judicial District Court in Libby. It regarded a proposal to do away with the 20th Judicial District which is Sanders County and combined it with Lincoln County. When **Speaker Mercer** talked with the judge about this, the judge stated he did not believe it would work. This letter follows up that if Sanders County were separated from Wright County and combined with Lincoln County, that Lincoln County would move up to the highest case load of 1168 filings. Lincoln County's case load includes several scores of asbestos cases, 80 at last count, with more being filed weekly. These cases are complex and each case requires two weeks of trial time. Most of the plaintiffs are elderly and many are very ill. These cases require as many trial settings as they can manage and they have set up four special file terms throughout each year to handle this asbestos litigation. Even at that, plaintiffs are dying before their cases can be heard. It would be virtually impossible to manage these cases by adding 350 cases each year to the existing case load. **REP. ORR** believes W.R. Grace knows they are losing these cases in court and they want to get away from that. He believes these workers need to continue to be able to go to court to get what is due them. Big corporations do not have a heart and soul, they don't live and breathe and they are doing what is best for the stockholders, not for the people who have hearts and souls and live and breathe. He asked the Committee not to fix this bill, but kill it.

Informational Testimony:

Jacqueline Lenmark, American Insurance Association, expressed she would like to present some observations about the bill and the testimony from the perspective of her association. First of all, although W.R. Grace is mentioned in the title of one of the cases in the 'whereas' clauses, it is her belief this bill is not

directed at one corporation. This bill's impact probably will have less impact on the employers than on insurers. It is her belief that most of these claims are insured and, if the bill passes, they will be insured either under the Occupational Disease Act or if not, under some other commercial liability policy. Very likely, they will be insured by the companies **Ms. Lenmark** represents. She is a member of the Montana Liability Coalition. She did not attend the meeting at which this particular piece of litigation was discussed, so she did not have the benefit of the coalition's decision to bring this legislation forward. She thinks **SEN. THOMAS'** introductory remarks were absolutely accurate and so were **Mr. Rohan's** remarks and arguments. This bill, if passed, will have an impact on a very small population of claims. Her concern with this bill is a precedent that it might set for insurance schemes. That is what she sees is a retroactive amendment of a benefit scheme. Insurance companies make their best guess, develop their rates, charge their premiums based on predictable information. When the premiums were collected for the claims that this legislation would cover, this benefit was not contemplated. She suspects her companies would probably incur dollars, but with these kinds of claims benefit if this legislation passes. But she also does not believe it is good public policy to retroactively adjust benefits when the premiums have already been collected. She seriously doubts that the employers heard about will have a dramatic economical affect one way or the other.

Questions From The Committee:

SEN. WILSON asked **Chris Gallus** who the Montana Liability Coalition consisted of.

Mr. Gallus responded they are an election of businesses and he is the chairman of the coalition and has been since he began with the Montana Chamber of Commerce. They generally send out solicitations to businesses and tell them about different things the coalition is involved in and they also generally seek contributions from that. Various members and associations meet on occasion to discuss legislation. They began with the Wrongful Discharge Employment Act in 1987 or 1989. They have done things since including the Joint Civil Liability bills last session.

SEN. WILSON asked when this bill was drafted, if W.R. Grace is mentioned in the language.

Mr. Gallus answered W.R. Grace is mentioned in the legislation because the Gidly decision pertains to them. This was never an attempt to place before this Committee or legislature the 'W.R. Grace Relief Bill'. They felt as a result of the Gidly case,

they could provide benefits for a certain class of employees and employers could have exclusive remedy for. This speaks to the employee-employer relationship and not exposure by W.R. Grace which might occur to families, residual exposures, or exposures on ballfields. W.R. Grace is still liable.

SEN. WILSON alleged everybody who testified has mentioned W.R. Grace, with the exception of Jacqueline Lenmark. He asked **Brendon Rohan** if he were involved with W.R. Grace in any form.

Mr. Rohan responded he does not represent W.R. Grace and has never represented W.R. Grace. His involvement in working with this bill did not include W.R. Grace. He was somewhat surprised by all the focus on W.R. Grace. The first time he heard the term 'W.R. Grace Relief Bill' was today. There may be many employers who have some benefit from this bill, but it is certainly not directed at W.R. Grace and never has been. From the testimony incurred, there are some problems with W.R. Grace. As **Mr. Sullivan** has acknowledged, once they bring people inside the Occupational Disease System, if you have an employer such as W.R. Grace who has engaged in types of conduct which have been alleged, there are, in fact remedies outside the Occupational Disease System which allows an employee who has been injured by the willful and intentional conduct by an employer to bring a civil claim. This bill certainly has a much more broad base than W.R. Grace and it goes down to any employer who had an employee who worked and terminated his employment as of July 1, 1979. From his perspective, this is not a W.R. Grace bill.

SEN. WILSON asked **Roger Sullivan** the same question. Did W.R. Grace bring forth this bill?

Mr. Sullivan responded 'yes', because it is the Gidly vs. W.R. Grace & Company decision which is recited in the preamble to be amended. It is the facts and the law that was handed down in that decision that this bill is intended to remediate at the expense of Montana workers and the expense of Montana's employers. As **Ms. Butler** and **Ms. Lenmark** pointed out, also at the expense of Montana's insurers. It doesn't make sense on a broad basis, but it explicitly derives from certain work-related disease process caused by toxic exposures in the workplace such as asbestosis.

SEN. WILSON inquired why there were three different diseases mentioned.

Mr. Sullivan conveyed the diseases which are caused by asbestos exposure at W.R. Grace's facility are mesophemiooma which is a cancer of the lining of the lungs which often times affects the

heart and is an extremely painful death process. There are many people in Libby who have died from mesothelioma. The second is lung cancer, which is one most of us are familiar with, and the third is asbestosis which is a fibrosis which results in suffocation because it turns the pliant lung into leather, so the victim cannot breathe, and ultimately they die a strangulated death.

SEN. WILSON asked if this is the plant close to the railroad tracks by Libby.

Mr. Sullivan answered that was the loading facility along the Kootenai River along the railroad tracks and this material was loaded into the railroad cars for transport all over the country into expanding plants. That ultimately was made into products including the Monoco Products and there have been extensive injuries which have occurred throughout the United States as a result of the application of asbestos product.

SEN. WILSON asked how many pending civil cases there are now.

Mr. Sullivan responded presently pending in the courts of Montana are over 100 cases against W.R. Grace. It is also important to keep in mind the expeditious resolution of these cases. The court involved as been uniquely capable of resolving these cases through an extraordinarily expeditious manner, unlike the Occupational Disease claims which take years to resolve. Those cases are excellently and efficiently managed and quickly resolved. Procedurally, the merits for resolving them in that manner are also far in favor of resolving them through civil action rather than the time-consuming and bureaucratic system of Occupational Disease administration in Montana. He said he just celebrated the dispensing of the Old Fund Liability. Why invite having to refinance that Old Fund.

SEN. MCNUTT asked **Mr. Sullivan** regarding the 100 cases filed against W.R. Grace, are they all employment related?

Mr. Sullivan answered a substantial portion are. The tragic truth is a small percentage of those involve the wives and a smaller percentage involves the children. Most involve the workers.

SEN. MCNUTT inquired of those which don't involve the workers, certainly they wouldn't be precluded from filing a case. The children and wives would not have been covered under Workers' Compensation, because they weren't working. If you have a

grievous act, this bill will not preclude these good folks from having their civil action against W.R. Grace.

Mr. Sullivan responded first of all, if the only injury sustained by an individual in Libby is a non-work related asbestos injury, they have a civil action. Many of the wrongful death claims that are presently pending in Libby, Montana are what are known as derivative actions. There was a wrongful death case which was tried a couple weeks ago. That case involved claims of the children based on the wrongful death of their father. It depends upon the nature of the claim which has been asserted by the family members.

SEN. COCCHIARELLA asked if there is someone who worked before July 1, 1979 who now knows or develops asbestosis, doesn't have another remedy if this bill is passed. The only remedy they have is to file an Occupational Disease claim. Is that the purpose of this bill?

Mr. Sullivan responded that is correct.

SEN. COCCHIARELLA asked **SEN. THOMAS** regarding how this bill does not affect many people and won't go too far, also, that we've worked together on these issues for a long time now, Jane worked at the ABC store for two years, sometime before she quit her job July 1, 1979. At that time, she had no symptoms of carpal tunnel. She quit that job and went home to babysit for 20 years. Then she went to the doctor who diagnoses the numbness in her hands is related to the work which she must have done. Would she fit under this bill and able to file a claim?

SEN. THOMAS responded he was not sure.

George Wood, Executive Secretary, Montana Self-Insurer's Association, stated under this bill, she could file.

SEN. COCCHIARELLA asked if Jane worked at the ABC store for sometime, quit before July 1, moved to Arizona and golfs for 20 years, could she file a claim under this bill?

Mr. Wood answered if she hasn't worked in Montana since July 1, 1979, yes.

SEN. COCCHIARELLA asked what if the ABC store no longer is in operation in Montana, quit business, went away, who would end up paying for that occupational disease?

Mr. Wood responded if the ABC store is out of business and it was self-insured, the self-insured employer would be liable.

SEN. COCCHIARELLA explained she is embarrassed and ashamed to have her name on this bill. In the 12 years she has been a legislator she has never felt so duped into signing a piece of legislation. She asked **SEN. THOMAS** if he knew this reaction would come as a result of his legislation.

SEN. THOMAS answered there was some inclination of this today, but not prior to today.

SEN. BARTLETT asked **Nancy Butler** since she mentioned that if this bill passed and someone were covered under the Occupational Disease Act for a pre-1979 claim if she would explain what the dollar amount of wages would be or what the settlement would be.

Ms. Butler explained for fiscal year 1978, which would have began July 1, 1977 the maximum wage loss benefit would have been \$174 per week. It might be less for prior years and more for later years. The medical benefits would begin the date of service. As long as a person is totally disabled, either temporarily or permanently, they would receive the bi-weekly benefits. There are no partial benefits available under the Occupational Disease Act. There is currently a benefit that if you have a wage loss, you can receive a payment up to \$10,000.

SEN. COCCHIARELLA asked regarding the amendment discussed at the beginning of the hearing (yet to be drafted), how does buying current administrative procedures work with current processes or procedures, using benefits from 1979?

Ms. Butler answered you would look at the definition of 'proximate cause' regarding how you would handle disputes.

SEN. COCCHIARELLA then asked her if she thought it would work.

Ms. Butler answered yes, without looking at it though, she thought it would work.

SEN. COCCHIARELLA asked what the maximum benefit under the Occupation Disease Act is now.

Ms. Butler conveyed it is \$411 per week is the maximum up to \$10,000 if the person is losing wages.

SEN. BERRY inquired of **Roger Sullivan** if he had any idea of the numbers of people filing claims using the pre-1979 law.

Mr. Sullivan said W.R. Grace would probably have a better count since they have extensive data on the number of employees who

have worked and when they worked. He referred the questions to **LeRoy Thom**.

Mr. Thom replied at the closure there were over 100 people and in the 1970s there were 400 people.

SEN. BERRY asked if the mine closed in 1990.

Mr. Sullivan responded it closed in 1990 and reclamation occurred and continued to ship out product between 1990 and 1993.

Closing by Sponsor:

SEN. THOMAS closed by apologizing to the people of Libby and said he appreciated all their testimony. He said it is good to know what has happened in Libby with W.R. Grace. It is still a question of public policy that occupational disease vs. litigation. That is a good and fair question. The circumstances which are now obvious doesn't make this a good time to examine that issue, but it still an issue which should be looked at in some point in time. We cannot amend W.R. Grace out with this legislation, but beyond the circumstances with family there are other employees outside that spectrum who don't fit in this same situation. They may have lighter cases which are true occupational disease cases and this legislation would help them. This legislation was brought to the Committee with those people in mind and not this situation with W.R. Grace. Even though W.R. Grace is mentioned in the legislation, they did not intend for it to be a W.R. Grace provision, it was a Supreme Court decision of litigation. This bill does have value in who it could help, but it has a lesser value of what has been presented by the people of Libby.

ADJOURNMENT

Adjournment: 5:59 P.M.

SEN. TOM KEATING, Chairman

Gilda Clancy, Secretary

TK/GC

EXHIBIT (las38aad)